COMMITTEE RATIOS/Limiting Debate

SUBJECT: Amending Rule XXV . . . S. Res. 14. Cochran (for Dole) motion to table the Harkin amendment No. 1.

ACTION: MOTION TO TABLE AGREED TO, 76-19

SYNOPSIS: As introduced and passed, S. Res. 14, a resolution to amend Rule XXV of the Standing Rules of the Senate, will establish the size of and party ratios on Senate committees.

The Harkin amendment would amend Rule XXII of the Standing Rules of the Senate to permit cloture on any pending matter (except for proposed changes to the Standing Rules) to be invoked by a decreasing majority vote of Senators down to a majority of all Senators duly chosen and sworn. More specifically, the amendment would provide for the following:

- An initial attempt to invoke cloture on any pending matter would require a three-fifths majority (60) vote of those Senators duly chosen and sworn to succeed;
- Each subsequent attempt would require 3 fewer votes to succeed, though the number of votes needed would not be reduced to fewer than a majority of those Senators duly chosen and sworn;
- no more than one cloture petition could be pending at one time on a matter before the Senate; and
- a two-thirds affirmative vote of those Senators present and voting would still be required to invoke cloture on a change to the Standing Rules of the Senate.

Debate was limited by unanimous consent. Following debate, Senator Cochran (for Senator Dole) moved to table the Harkin amendment. Generally, those favoring the motion to table opposed the amendment; those opposing the motion to table favored the amendment.

NOTE: Following the vote, per a prior unanimous consent agreement, S. Res. 14 was adopted by voice vote.

Those favoring the motion to table contended:

Our colleagues would have us use a sledgehammer to kill a small beetle. The "small beetle" to which we are referring is the rather

(See other side)

YEAS (76)

Republicans (53 or 100%)		Democrats (23 or 55%)
Abraham	Hutchison	Akaka
Ashcroft	Inhofe	Baucus
Bennett	Jeffords	Biden
Bond	Kassebaum	Bradley
Brown	Kempthorne	Breaux
Burns	Kyl	Byrd
Chafee	Lott	Conrad
Coats	Lugar	Daschle
Cochran	Mack	Dodd
Cohen	McCain	Dorgan
Coverdell	McConnell	Exon
Craig	Murkowski	Feinstein
D'Amato	Nickles	Ford
DeWine	Packwood	Glenn
Dole	Pressler	Heflin
Domenici	Roth	Inouye
Faircloth	Santorum	Johnston
Frist	Shelby	Kohl
Gorton	Simpson	Levin
Gramm	Smith	Mikulski
Grams	Snowe	Moynihan
Grassley	Specter	Murray
Gregg	Stevens	Reid
Hatch	Thomas	
Hatfield	Thompson	
Helms	Thurmond	
	Warner	

NAYS (19)

Republicans (0 or 0%)	Democrats (19 or 45%)
	Bingaman
	Boxer
	Bryan
	Bumpers
	Feingold
	Graham
	Harkin
	Kennedy
	Kerrey
	Kerry
	Lautenberg
	Lieberman
	Moseley-Braun
	Pell
	Pryor
	Robb
	Sarbanes
	Simon
	Wellstone

NOT VOTING (5)

Republicans (0)	Democrats (5)
	Campbell-[2]
	Hollings-[2]
	Leahy-[1]
	Nunn-[3]
	Rockefeller-[2]

EXPLANATION OF ABSENCE:
1—Official Buisiness
2—Necessarily Absent
3—Illness
4—Other

SYMBOLS:
AY—Announced Yea
AN—Announced Nay
PY—Paired Yea
PN—Paired Nay

modest abuse that has occurred in recent years of the right to object to a unanimous consent request to proceed to a matter. The "sledgehammer" to which we are referring is this amendment's evisceration of the right to engage in extended debate, which is perhaps the most meritorious characteristic of the Senate. Our colleagues have made this proposal because they have falsely concluded that the huge increase in cloture filings is in response to an abuse of the right to filibuster, and because they have a different view of the purpose of this right.

In the past few Congresses, with both Republican and Democratic majorities in the Senate, the number of cloture petitions that have been filed has increased dramatically. However, during debate, proponents of this amendment have conceded that the large majority of those motions have been filed to close debate on motions to proceed. The significance of this fact has escaped them. Numerous other opportunities to engage in extended debate exist but are much less frequently exercised--amendments to bills, bills themselves, the motion to disagree to the House's amendments, the motion to request a conference, the motion to appoint conferees, and conference reports may all be filibustered. Proponents of this amendment have incorrectly surmised that the motion to proceed has had more motions filed on it merely because it is usually the first opportunity to engage in extended debate.

However, other dynamics are at work. All of these motions have been filed because of an unwillingness of majority leaders, whether Republican or Democrat, to adjourn for a new legislative day. Adjourning moves items forward on the legislative calendar, thereby diminishing a leader's control over the Senate's schedule. Leaders instead have preferred to recess at the end of each day. This practice, though, makes morning hours rare. By staying on the same legislative day, the two hours of morning hour that start each legislative day are rarely held. During those two hours, the motion to proceed is not debatable. A leader who wishes to proceed to any item merely needs to adjourn and then proceed the next day during morning hour, and no Senator may object. Majority leaders have made a trade-off--they have increased their control of the Senate's schedule by recessing instead of adjourning, but in so doing they have lost the morning hour advantage of being able to proceed to a bill without debate.

This tighter control of the Senate's schedule is part of a broader pattern of increased partisanship in the Senate. Senators in minority parties have had a difficult time in certain Senate committees in moving their legislative initiatives forward, and conference committee deliberations have often been very partisan affairs. As a result, both Democratic and Republican Senators, when they have been in the minority, have sought new ways to see that their views are represented in the Senate. One very common avenue used has been to object to the motion to proceed. Often the objections that have been raised have had nothing to do with the substance of the matter being proceeded to--nominations, in particular, have frequently been delayed due to legislative or parochial disputes.

Some Senators have taken this right to object to extremes, delaying important and popular legislation for trivial reasons. However, these objections cannot be properly characterized as filibusters. They are bargaining tools, with which Senators hope to extract concessions. Once cloture is invoked, further attempts at delay are not attempted. Effectively eliminating the right to extended debate to get at this minor abuse would be an extreme overreaction.

Other cloture motions that are filed are actually filed to overcome objections to proceeding to the substance of a measure, but the "necessity" of these motions is of a majority party's own making. A common sequence of events now is for a majority leader to ask unanimous consent to proceed to a measure, for an objection to be raised, and for the majority leader then to offer one or more motions to close debate before a word of debate has been uttered. The motion to proceed is then withdrawn, allowing the Senate to consider other matters, but the cloture motions remain pending. Two days later, when the first motion ripens, a cloture vote is held. Usually, the vote is close to the required 60-vote margin, because whichever party is in charge has fashioned its proposal to garner it's own member's votes, plus the votes of a few usual suspects from the other party. In other words, another reason cloture votes have increased is that compromise has often been less popular than partisan brinkmanship.

In a few cases, the Senate still sees real filibusters. Sometimes bills are opposed by a minority of Senators who are determined to stop their passage. Sometimes they succeed, sometimes they do not. A filibuster is not merely a tool to delay passage of a measure, as our colleagues imagine; it is instead a delaying tool that is intended to kill a measure. The fact that a minority of Senators can stop passage of legislation which they strongly oppose is perhaps the greatest strength of the Senate. A tyranny of the majority is protected against by requiring a large consensus to override strong minority objections. A bare majority that listlessly favors a result that will prove very harmful to a small minority should not be in a position to impose its will cavalierly. In the House this situation prevails--the minority has virtually no rights. The Senate, in contrast, exists largely to protect minority rights. Its very composition discloses its nature. Each Senator is equal, regardless of the population of his or her State. This arrangement makes it possible for Senators to protect less populous States, with their fewer Representatives, from harmful legislation that a majority of Americans favor because their States are not harmed. Regional minority rights are not the only rights worthy of protection--other minority rights should also be defended.

Some Senators speak of the word "filibuster" as bringing to mind images of quaint horse-and-buggy days, and say it is out of place in the fast-paced information age. We prefer to trace the history back farther still, to the Roman roots of our democracy. In 60 B.C., we know that Cato the Younger successfully conducted a filibuster of legislation that was certain to pass had he not been willing to engage in extended debate. It is instructive that not too many years after this event Caesar, as a first step to eliminating the right to debate in the Roman Senate, limited the permissible length of Senators' speeches. Our founding fathers were aware of this history, as they were aware of the importance of the freedom of speech in the British Parliament in the modern development of representative democracy, and they accordingly designed the U.S. Senate to protect minority rights. Our colleagues have countered that the British

Parliament also has had a motion for stopping debate for nearly 400 years, and that the U.S. Senate copied that motion in its early years, but it is also true that it quickly abandoned it. The United States' system of government has never been a carbon copy of the British system--from the beginning, Americans have been more suspicious of the concentration of power, more determined to have limited government, and more protective of individual and minority rights. It did not take long for Senators to find that limiting debate was inconsistent with the Senate's role, and, consequently, for approximately 200 years now, the principle has remained that a determined minority has the right to unlimited debate.

The Harkin amendment would totally destroy that right. Under the Harkin amendment, every two days the number of Senators needed to invoke cloture would decline by three, until all that would be needed is a simple majority vote. Thus, in 8 days, a majority leader could schedule four votes, and would need only a simple majority to prevail. Of course, during those 8 days, the Majority Leader under the Senate rules could bring up other legislative or executive items. Under this amendment, there could conceivably be delay without debate, and nearly certain passage by simple majority votes. With careful scheduling and numerous cloture votes, a determined majority leader would be able to drive through any legislation that was supported by a bare majority of Senators, with little regard for minority views. The Senate would operate like the House.

We see little advantage to having a Congress made of two Houses of Representatives. We support the right to unlimited debate. Though we admit that the right to object to the motion to proceed has been abused, we adamantly reject the contention that the right to filibuster has been abused. We therefore strongly favor the motion to table the Harkin amendment.

Those opposing the motion to table contended:

The Senate has been traditionally called the greatest deliberative body in the world. Part of this tradition has allowed for extensive debate, so that Senators may fully express their views, and attempt to persuade each other with reasoned debate. The rules governing the length of debate have changed over the years, but the intention has always been to ensure a thorough airing of views. When times have changed, and the length of debate has been used to block legislative action permanently instead of to persuade, the rules have changed to limit the length of debate. Times have again changed, and it is time again to amend the Senate's rules.

Some Senators, in their review of our democratic history, have come to the conclusion that the right to filibuster is a basic, integral part of a representative democracy. We disagree. It is true, as our colleagues say, that a milestone in the modern development of democracy was the granting to the Members of the British Parliament of the right to debate freely. It is also true that our founding fathers copied that right in article 1, section 6 of the Constitution. What is not true, though, is that the right was intended to be a right of unlimited debate. At some point, the American people have a right to have their elected representatives vote on an issue, and that vote should be decided by majority rule. The Constitution's framers never intended for debate to be used to prevent Congress from acting. On some points, certainly, the framers did require supermajority votes. These exceptions are written into the Constitution. These exceptions aside, the framers clearly expected that both Houses would decide questions by simple majority votes. The fact that the framers intended majority rule to prevail in both the Senate and the House does not mean that they intended both bodies to operate in the same fashion. They had studied the turmoil of mob rule that had occurred in some European democracies, and they wanted a second legislative body to "cool" the legislation from the House. Senators were not directly elected and they served for 6-year terms as a means of making them more removed from the mercurial body politic. The intention was not to block legislation or majority rule, but to provide for more careful deliberation. Our founding fathers were also concerned with protecting minority rights, but they chose to do so primarily through the creation of divided and federated government and by passing the bill of rights, not by creating the Senate.

In the early years of our republic Senate rules allowed for the motion for the previous question. This motion, which traces its roots to the British Parliament of 1604, was used more as a tabling motion than as a means of stopping debate. That restriction was quickly abandoned, and until 1917 Senators had an unrestricted right to debate. This right was rarely exercised, and when it was the purpose was usually to prevent passage of legislation during lameduck sessions, which were the norm rather than the exception in the 19th century. By 1917, though, the use of unlimited debate as a permanent delaying tactic had begun, and the Senate enacted its first cloture rule. Three changes to that rule have been adopted, the last change being in 1975 when the Senate adopted the current rule. The changes that were adopted were related to the vote margin that was necessary to invoke cloture.

Recent abuse of the right to unlimited debate makes it necessary that we change the rule yet again. In the previous four years there were twice as many filibusters per year as occurred between 1981 and 1986, and ten times as many as took place between 1917 and 1960. In the previous Congress alone, we had twice as many filibusters as we had in the entire 19th century. Clearly, the problem is growing exponentially.

The result is gridlock and voter disgust. The last election was largely about reform. Democrats, Republicans, and independents have all expressed dismay over the delaying tactics in the Senate, and have demanded that we do away with the filibuster. Times have changed--the Senate no longer meets for a few months a year to discuss a few issues. Being a Senator is now a full-time, arduous job. The workload is crushing, which has increased the opportunity to abuse the right to debate. When more work must be done, the threat of delay is equivalent to a legislative death threat. Senators in both parties have increasingly been willing to use their right to demand concessions that the majority does not favor as their price to allow bills to move forward. The Senate, as a result, has become

increasingly ungovernable, and gridlock has resulted.

The Harkin amendment would end the gridlock without ending the debate. All the debatable motions that currently exist would be left intact. It would take several days before only a majority would be needed to invoke cloture on any of these motions. A determined minority could still delay any measure for weeks. During that time, with force of reason and appeals to the public, they could attempt to change opinions. Ultimately, though, if they failed to win a majority view, they would not be able to prevent a final, majority vote on a bill.

The Harkin amendment would defend the right to extended debate, but it would bring to an end the unjust right of a determined minority to engage in endless debate. This reform is long overdue, and merits our enthusiastic support.